

RESOLUTION NO. 1174

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,
CALIFORNIA AUTHORIZING EXECUTION OF AN AGREEMENT FOR THE
COLLECTION OF REFUSE, GARBAGE, AND OTHER WASTE MATERIALS
WITHIN THE CITY OF LEMON GROVE, CALIFORNIA

WHEREAS, an Agreement entitled "Agreement for the collection of refuse, garbage, and other waste materials within the city of Lemon Grove, California" has been presented to the City Council; and

WHEREAS, the parties to the Agreement are the City of Lemon Grove and EDCO Disposal Corporation; and

WHEREAS, EDCO Disposal Corporation and its predecessor, Thomas and son, have been providing solid waste disposal services in the Community of Lemon Grove for the past 40 years; and

WHEREAS, the City Council of the City of Lemon Grove finds it in the public interest to enter a franchise agreement with EDCO Disposal Corporation; and

WHEREAS, the effective date of said agreement for rate and franchise fee purposes shall be October 1, 1989.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby approves the attached agreement between the City of Lemon Grove and EDCO Disposal Corporation and authorizes the Mayor to sign said agreement on behalf of the City.

Passed and adopted by the City Council of the City of Lemon Grove,
California on August 7, 1989 by the following vote:

Council Members	Ayes	Noes	Abstain	Absent
James V. Dorman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lois Heiserman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Cochran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Robert F. Burns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Karen O'Rourke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



JAMES V. DORMAN, MAYOR

ATTEST:



KAREN THOMSON, City Clerk

CERTIFICATION OF THE CITY CLERK

I, Karen Thomson, City Clerk of the City of Lemon Grove, California do hereby certify the foregoing to be a true and exact copy of Resolution No. _____, duly passed and adopted by the City Council of said City on _____.

KAREN THOMSON, City Clerk

AGREEMENT FOR THE COLLECTION OF REFUSE, GARBAGE, AND OTHER WASTE
MATERIALS WITHIN THE CITY OF LEMON GROVE, CALIFORNIA

The parties to this agreement are the City of Lemon Grove and the Edco Disposal Corporation, a California corporation. The City make this agreement with Collector pursuant to powers granted it by California Health and Safety Code Section 4250. Collector is engaged in the business of collection and disposal of gargage, waste, refuse, rubbish offal, trimmings, and other refuse matter, all hereinafter referred to as refuse.

In consideration of their mutual promises and other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Definitions

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meaning assigned to them in the following definitions (unless in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) Grantee shall mean EDCO DISPOSAL CORPORATION and its lawful successors or assigns.

(b) "City" shall mean the CITY OF LEMON GROVE, a municipal corporation of the State of California in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(c) "Streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said city, including state highways now or hereafter established within said city.

(d) "Gross Receipts" shall mean all gross operating revenues received by grantee from the collection and disposal of refuse within the City of Lemon Grove.

SECTION 2. Purpose

The franchise to collect and dispose of refuse within the City of Lemon Grove and to use for such purposes the public streets, ways and places within said City is hereby granted to Edco Disposal Corporation, its successors and assigns.

Section 3. Term

The term of this Agreement shall commence October 1, 1989, and expire September 30, 1994. Provided, however, that commencing September 1, 1990 and every year thereafter, automatic one year extensions shall be applied to said Agreement so that the the term of the Agreement shall remain between four and five years.

Should either party desire that said automatic one renewal and extension provision be terminated, such party may give the other written notice of such termination thirty (30) days prior to September 30 of any year of the Agreement. Such notice will terminate the automatic one year renewal and extension provision, and the Agreement shall remain in effect for the balance of the term then outstanding.

Section 4. Consideration

The Grantee of said franchise shall during the term thereof pay to the City five percent (5%) of the gross annual receipts of said grantee. City is authorized to increase said fee up to maximum amount of ten percent (10%). Beginning October 1, 1990, the franchise fee shall be increased by one-half percent (1/2%) each year thereafter until it reaches a maximum of ten percent (10%). The payment set out in this paragraph shall be considered an operating cost and shall be considered in any request for rate increase authorization.

Not later than October 1, 1989, Grantee may provide the City with a proposed rate schedule for the year 1990. If the City Council approves such schedule, it shall apply for the year 1990. If, however, the City Council does not approve such rate schedule, the City and Grantee shall attempt to agree upon a rate schedule. In the event of their failure to do so on or before December 15, 1989, the rate schedule for the year 1989 shall be in effect. The Grantee may, by October 1st of each subsequent year, during the term of this agreement, submit a proposed rate schedule for the following year in the same manner as above, provided each party shall have the same rights for each ensuing year for establishing of rates as are set forth above. Grantee may apply for an increase in rates at other times for any unusual economic hardships not within the Grantee's control as approved by the City Council. Grantee may not submit a proposed rate schedule unless operational costs have increased by two percent (2%) or more since the immediately preceding rate revision.

Section 5. Reports, Dates of Payment and City Audit.

The Grantee shall, not later than the 10th of each and every month submit to the City Finance Director a signed statement of gross collections during the preceding month. Grantee shall also submit by the 10th of each month the franchise fee appropriate for the preceding month. The Grantee shall keep full, complete and proper books, records and accounts of the gross sums collected within the City of Lemon Grove and said books, records, and accounts shall at all reasonable times be open to the inspection of the City or the City's authorized representative or agent. City may at its discretion audit Grantee's books and records to ascertain that the franchise fees required herein have been paid properly. If said audit reveals that Grantee is guilty of deliberate deception in keeping of its records and books, City shall have the right to immediately terminate this franchise.

SECTION 6. Compliance with Laws

Grantee shall comply with all laws and regulations of the State of California and the City of Lemon Grove. Further, Chapter 13.28 of the Lemon Grove Municipal Code is expressly made a part of this Franchise and incorporated herein by reference as if set forth in full. Grantee and City agree to be bound by all provisions of such ordinance, or any amendments thereto, or other Ordinances that might affect the collection or disposal of refuse in the City. It is understood that said ordinances are intended to be minimum standards and that higher standards and regulations may be required under the franchise.

Section 7. Obligation of Grantee

Grantee undertakes and agrees, for the consideration hereinafter mentioned, to furnish: all labor, equipment, and vehicles (including adequate equipment and vehicles in a standby capacity to provide the service herein required in the event of a breakdown of equipment); insurance and bonds necessary to insure the efficient and timely picking up, collecting, removing, and disposing of City refuse subject to and in accordance with the terms and provisions hereof.

Grantee shall provide and maintain at his own expense a solid waste collection system capable of providing service to all entities in the City requiring, or required to avail itself of said service. Not less than one regular weekly collection shall be provided to each residential unit subscribing to said service. Grantee shall provide bins as required for commercial customers or whenever other customers of Grantee request their use.

All refuse collected by Grantee shall become the property of Grantee immediately upon the collection thereof, and shall be forthwith removed and transported by Grantee to an approved place of disposal, which shall be provided, arranged for, or furnished by Grantee.

In the event Grantee fails, refuses, or neglects to collect and dispose of refuse set out or placed for collection at the time and in the manner herein required, City may collect and dispose of the same or cause the same to be collected and disposed and Grantee shall be liable for all expenses incurred in connection therewith. Such remedy of City shall be cumulative and in addition to any and all other remedies it may have in the event of such failure, refusal or neglect of Grantee.

The following shall be considered legal holidays for purposes of this agreement: New Year's Day, Thanksgiving Day, and Christmas Day. Observance of those holidays will result in refuse being collected one day late during the week of the holiday. Any other holidays

must have prior approval from the City. Holiday disruptions of commercial collections shall be handled in a manner mutually agreeable to the Grantee and individual customers.

As a further service to the public, Grantee agrees to collect refuse from all premises and properties owned by, controlled by, or occupied by the City, which properties are designated in advance by the City Manager. Service shall be provided as frequently as Grantee renders services to its collection customers or as frequently as is necessary in the judgement of the City Manager. Grantee shall provide trash bins as are suitable for the collection of refuse at each location to which Grantee is required to render said free service.

Grantee agrees to provide all labor and equipment necessary for one Community Clean-up Day each year.

Grantee agrees to treat and deal with the general public in a courteous manner and to do its utmost to serve the public well, faithfully, and courteously.

Grantee agrees to have a listed telephone number, which telephone shall be answered seven days a week, twenty-four hours a day. Grantee further agrees to maintain an office in the City of Lemon Grove with regular open hours Monday through Friday where customers may conduct business with Grantee.

Grantee agrees to maintain a record of all service complaints received from customers in the City of Lemon Grove as well as the disposition of those complaints. Grantee shall make said records available to the City Manager or his designated representative upon demand.

Section 8. City Held Harmless - Insurance

This agreement is made upon the express condition that the City is to be free from all liability and claim for damages by reason of any injury to any person or persons, including Grantee from any cause or causes whatsoever while connected in any way with Grantee's operations hereunder, Grantee hereby covenanting and agreeing to indemnify and save harmless from all liability, loss, cost, and obligations on account of or arising out of any such injuries or losses however occurring.

Grantee further agrees to take out and keep in force during the life hereof, at Grantee's expense, public liability insurance in companies approved by the City to protect against any liability to the public incident to the use of or resulting from any accident occurring in or in connection with the Grantee's operation hereunder. The liability under such insurance to be not less than \$1,000,000 for any one person injured, or \$5,000,000 for any one accident, or \$200,000 for property damage.

These policies shall insure the contingent liability of the City and are to be placed with the City, and Grantee is to obtain an obligation on the part of the insurance carriers to notify the City in writing thirty (30) days prior to any cancellations thereof; and Grantee agrees that if it does not keep such insurance in full force and effect, the City may take out the necessary insurance and pay the premium and the Grantee shall repay the City immediately upon demand or the Franchise shall be terminated.

Grantee shall also secure and maintain during the life of this agreement at Grantee's expense, adequate Worker's Compensation insurance covering all persons employed by Grantee and shall furnish the City with a certificate of such insurance.

Grantee shall furnish a Surety Bond in the amount of \$25,000 as security for the faithful performance of this agreement. The Surety Bond and the form thereof must be approved by the City Attorney.

Section 9. Rates

Grantee shall charge no more than the maximum rate set forth in the Rate Schedule which shall be determined from time to time by the City Council adopted by Resolution. Grantee may charge less than the rates set out in the rate schedule but may not charge more. Any rate charged to a classification of user shall be charged uniformly to all users in that classification.

In the event the volume of refuse left for pickup by a commercial user is greater than the volume limits set forth in the current Rate Schedule Resolution, or, in the event that accessibility to pickup points is restricted or impaired, thereby causing additional cost of collection to Grantee, the Grantee shall negotiate, in good faith, a collection fee with the affected user. In the event a reasonable fee cannot be negotiated between grantee and user the City Manager shall determine an appropriate fee. The decision of the City Manager shall be final.

Section 10. Obligations of City

City, in consideration of the faithful performance by Grantee and the deposit of bonds and certificates of insurance herein referred to, agrees that said Grantee shall have the exclusive right to collect all refuse and garbage within the City of Lemon Grove from the date of this agreement insofar as it is within the power of said City by this agreement to grant such exclusive right under its ordinances and the laws of the State of California; and that during the continuance of this agreement and the faithful performance thereof by said collector, no other person shall be given the right to engage in the business of collecting any refuse or garbage from the territory within the City of Lemon Grove.

Section 11. Right to Cancel

In the event the Grantee shall fail or refuse to perform any of the agreements or covenants by him undertaken to be performed, including but not limited to the regular, prompt collection of all garbage and trash, as herein specified, and as specified by schedules therefore established, the City shall have the right to terminate and cancel this agreement upon forty-eight hours notice by mail to the Grantee. The City also reserves the right to terminate and cancel this agreement upon seven (7) days' notice in the event the people of the City of Lemon Grove, by initiative or referendum vote require the City to furnish either garbage or refuse collection service by the use of municipal employees and no damages shall be due Grantee as a result of the City thereafter engaging in sch collection service as a municipal service.

Any and all notices and demands by and from the City to Grantee or Grantee to City shall be in writing. They shall be served by registered mail and service shall be conclusively made forty-eight (48) hours after the deposit thereof in the United States mail, postage prepaid, addressed to the party to whom such notice or demand is to be given, as follows:

City: City Manager
City of Lemon Grove
3232 Main Street
Lemon Grove CA 920445

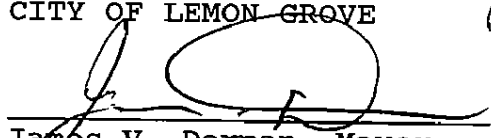
Grantee: EDCO Disposal Corporation
6670 Federal Boulevard
Lemon Grove CA 92045

Section 12 Termination for Cause: Notice of Breach


In the event that the City elects to terminate this agreement "for cause" it shall give Grantee written notice thereof at the above address. Notice shall be considered to have been given upon deposit of said notice in the United States mail in the City of Lemon Grove, postage prepaid, and shall be effective forty-eight hours thereafter.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS AGREEMENT
this 15 day of August 1989 at Lemon Grove, California.


CITY OF LEMON GROVE


James V. Dorman, Mayor

ATTEST:


Karen Thomson, City Clerk

EDCO DISPOSAL CORPORATION


Edward G. Burr, President